

**MODEL ORDINANCE ELIMINATING SMOKING IN ALL WORKPLACES
AND PUBLIC PLACES EXCEPT FREESTANDING BARS
(100% SMOKEFREE)
*Revised April 2002***

Sec. 1000. Title

This Article shall be known as the _____ [*name of City or County*]
Smokefree Air Act of _____ [*year*].

Sec. 1001. Findings and Intent

The _____ [City Council *or* Board of Supervisors] does hereby find that:
Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 (Monograph #10) that secondhand smoke is responsible for the early deaths of 65,000 Americans annually.

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997).

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.

Accordingly, the _____ [City Council *or* Board of Supervisors] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public

places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 1002. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "Attached Bar" means a bar area of a restaurant.
2. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
3. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
4. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
5. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
6. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
7. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
8. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
9. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
10. "Private Function" means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.

11. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include an attached bar.
12. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
13. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
14. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
15. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
16. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 1003. Application of Article to [City-Owned *or* County-Owned] Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the _____ [City *or* County] of _____, shall be subject to the provisions of this Article.

Sec. 1004. Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within the _____ [City *or* County] of _____, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
3. Bingo facilities when a bingo game is in progress.
4. Convention facilities.
5. Elevators.
6. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
7. Health care facilities.
8. Licensed child care and adult day care facilities.
9. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
10. Polling places.

11. Public transportation facilities, including buses and taxicabs, under the authority of the _____ [City *or* County] of _____, and ticket, boarding, and waiting areas of public transit depots.
12. Restaurants, including attached bars.
13. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
14. Retail stores.
15. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the _____ [City *or* County] or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the _____ [City *or* County].
16. Service lines.
17. Shopping malls.
18. Sports arenas, including enclosed places in outdoor arenas.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1006. Reasonable Distance

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

Sec. 1007. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

1. Bars other than attached bars.
2. Private residences, except when used as a licensed child care, adult day care, or health care facility.
3. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated.
4. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
5. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly

rooms when these places are being used for private functions; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

6. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
7. Outdoor areas of places of employment except those covered by the provisions of Section 1006.

Sec. 1008. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1009(A) is posted.

Sec. 1009. Posting of Signs

A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec. 1010. Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

Sec. 1011. Enforcement

A. This Article shall be enforced by the _____ [Department of Health *or* City Manager *or* County Administrator] or an authorized designee.

B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City *or* County] of _____.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health *or* City Manager *or* County Administrator].

D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.

F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health *or* City Manager *or* County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 1012. Violations and Penalties

A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1013. Public Education

The _____ [Department of Health *or* City Manager *or* County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1014. Governmental Agency Cooperation

The _____ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities within the _____ [City *or* County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County *or* City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1015. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1015. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1017. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.